

AN ORDINANCE BY:

10-0-0329

COMMUNITY DEVELOPMENT / HUMAN RESOURCES COMMITTEE

**AN ORDINANCE FOR FINAL ACTION ON A REQUEST FOR THE  
ISSUANCE OF A CEMETERY DISTURBANCE PERMIT FOR  
PROPERTY LOCATED AT 431 PHARR ROAD; AND FOR OTHER  
PURPOSES.**

**WHEREAS**, O.C.G.A. §§ 36-72-1 *et seq* sets forth the obligations of the governing authorities of counties and municipalities with respect to the care to be accorded to the remains of deceased persons in a manner which reflects respect and regard for human dignity as well as cultural, spiritual, and religious values; and

**WHEREAS**, O.C.G.A. §36-72-5 allows individuals seeking to relocate human remains to request a permit to do so from a county or municipality; and

**WHEREAS**, O.C.G.A. §36-72-3 delegates the final decision to the governing authority in any process created by a county or municipality for the approval or denial of applications by persons seeking to relocate human remains; and

**WHEREAS**, pursuant to the guidance and authority provided by O.C.G.A. §36-72-9, the City Council has designated the Urban Design Commission ("UDC") to hear and receive applications for permits from persons who seek to relocate human remains from cemeteries and burial grounds located in the City of Atlanta as the preliminary step in this process; and

**WHEREAS**, a property owner has made an application (the "Application," copy marked as Exhibit "A" is attached) for the issuance of a permit to relocate human remains from a cemetery located at 431 Pharr Road (the "Permit"); and

**WHEREAS**, the application was initially heard before the UDC on April 22, 2009, with subsequent public hearings on June 10, 2009; August 12, 2009; September 9, 2009; November 9, 2009; and December 9, 2009; and

**WHEREAS**, the UDC voted to recommend denial of the Application for the Permit to relocate the human remains presently located at 431 Pharr Road; and

**WHEREAS**, the recommendation of Community Development / Human Resources shall be made after a second public hearing so that the City Council can take final action with respect to whether the application should be denied or a permit should be issued in accordance with City Code Section 38-64 and the applicable state law.

**NOW THEREFORE, THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA  
HEREBY ORDAINS** as follows:

**Section 1.** After considering the recommendation made by the Community Development / Human Resources Committee after its public hearing, the recommendation of the UDC after its

public hearing and reviewing the Application in accordance with the criteria set out in Section 38-64 of the Code of Ordinances and applicable state law, the vote to approve or adverse this ordinance shall be and is the decision of the governing authority on the Application for a permit to relocate the human remains presently located at 431 Pharr Road such that:

- (1) an adverse vote shall be a denial of the Permit pursuant to the procedure set forth in Section 2 of this ordinance;
- (2) an affirmative vote shall be a vote for approval of the Permit to allow the applicant to relocate the human remains in the cemetery located at 431 Pharr Road pursuant to the Application, any conditions imposed in the manner set forth in Section 3 of this ordinance and in accordance with applicable law.

**Section 2.** In the event that the Permit is denied, the development of the written record supporting the decision of the governing authority is hereby delegated to the Executive Director of the UDC who shall (i) notify the applicant of the decision within ten (10) days of the effective date of this ordinance and (ii) within thirty (30) days of the effective date of the ordinance prepare a written summary of the reasons for denial based on the record created in the various public hearing as to one or more of the following factors:

- (1) The presumption in favor of leaving the cemetery or burial ground undisturbed;
- (2) The concerns and comments of any descendants of those buried in the burial ground or cemetery and any other interested parties;
- (3) The economic and other costs of mitigation;
- (4) The adequacy of the applicant's plans for disinterment and proper disposition of any human remains or burial objects;
- (5) The balancing of the applicant's interest in disinterment with the public's and any descendant's interest in the value of the undisturbed cultural and natural environment; and
- (6) Any other compelling factors which the Council deems relevant.

**Section 3.** In the event that the Permit is approved in whole or in part, the Executive Director of the UDC is hereby delegated to inform the applicant no sooner than thirty days after the effective date of this ordinance that the permit has been approved and to issue such permit based on the plan for mitigation of the effect on the human remains set forth in the Application including any additional requirements imposed to mitigate the proposed activity's adverse effects on the cemetery or burial ground including but not limited to:

- (1) the relocation of any proposed project;
- (2) preservation of the cemetery or burial ground as an undeveloped area within the proposed development or use of land; and/or

- (3) any additional conditions to assure the respectful disinterment and proper disposition of the human remains.

This Permit, if approved pursuant to this ordinance shall not become effective until thirty (30) days after this ordinance has become final. In no event shall the Permit, if approved or approved with conditions, be considered to alter the requirements of the City Code or allow the applicant to exceed the protections provided by state law. In the event that any human remains not identified in the Application are discovered, the applicant shall be required to cease development activity and apply for an additional permit.

**Section 4.** This ordinance shall become effective and be final upon signature by the Mayor or by operation of Sec. 2-403 of the City Charter.

**Part II: Legislative White Paper:** (This portion of the Legislative Request Form will be shared with City Council members and staff)

**A. To be completed by Legislative Counsel:**

**Committee of Purview: COMMUNITY DEVELOPMENT/HUMAN RESOURCES**

**Caption:**

**AN ORDINANCE FOR FINAL ACTION ON A REQUEST FOR THE ISSUANCE OF A CEMETERY DISTURBANCE PERMIT FOR PROPERTY LOCATED AT 431 PHARR ROAD; AND FOR OTHER PURPOSES.**

**Council Meeting Date: March 1, 2010**

**Requesting Dept.: PLANNING AND COMMUNITY DEVELOPMENT**

**FAC Confirmed by:**

**B. To be completed by the department:**

**1. Please provide a summary of the purpose of this legislation (Justification Statement).**

The legislation is required to allow the City to comply with its cemetery relocation ordinance.

**2. Please provide background information regarding this legislation.**

An application was made to the Atlanta Urban Design Commission, under the City's cemetery relocation ordinance, to relocate the cemetery at 431 Pharr Road.

**3. If Applicable/Know:**

- (a) **Contract Type (e.g. Professional Services, Construction Agreement, etc):** NA
- (b) **Source Selection:** na
- (c) **Bids/Proposals Due:** na
- (d) **Invitations Issued:** na
- (e) **Number of Bids:** na
- (f) **Proposals Received:** na

(g) Bidders/Proponents: na

(h) Term of Contract: na

4. Fund Account Center (*Ex. Name and number*): n/a

5. Source of Funds: *Example: Local Assistance Grant* n/a

6. Fiscal Impact: None.

*Example: This legislation will result in a reduction in the amount of \_7,000.\_\_\_\_\_ to Fund Account Center Number \_\_250403-5212001\_\_\_\_\_.*

7. Method of Cost Recovery: na

*Examples:*

- a. Revenues generated from the permits required under this legislation will be used to fund the personnel needed to carry out the permitting process.*
- b. Money obtained from a local assistance grant will be used to cover the costs of this Summer Food Program.*

This Legislative Request Form Was Prepared By: Doug Young

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: CHIEF OF STAFF

Dept.'s Legislative Liaison: Garnett Brown

Contact Number: 6724

Originating Department: Planning and Community Development

Committee(s) of Purview: Community Development/Human Resources

Chief of Staff Deadline: February 9, 2010

Anticipated Committee Meeting Date(s): February 23, 2010

Anticipated Full Council Date: March 1, 2010

Legislative Counsel's Signature: \_\_\_\_\_

Commissioner Signature: \_\_\_\_\_

Chief Procurement Officer Signature: \_\_\_\_\_

CAPTION

AN ORDINANCE FOR FINAL ACTION ON A REQUEST FOR THE ISSUANCE  
OF A CEMETERY DISTURBANCE PERMIT FOR PROPERTY LOCATED AT  
431 PHARR ROAD; AND FOR OTHER PURPOSES.

FINANCIAL IMPACT (if any)

Mayor's Staff Only

Received by CPO: \_\_\_\_\_  
(date)

Received by LC from CPO: \_\_\_\_\_  
(date)

Received by Mayor's Office: 2.1.10 62  
(date)

Reviewed by: 2/11/10  
(date)

Submitted to Council: \_\_\_\_\_  
(date)